

AMENDED IN ASSEMBLY JULY 16, 1998

**SENATE BILL**

**No. 1251**

**Introduced by Senator Calderon**

February 28, 1997

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~~An act to amend Sections 12965, 12970, and 12989.2 of the Government Code, relating to fair employment and housing. An act relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1251, as amended, Calderon. ~~Fair employment and housing~~ Education: prior year appropriations.

(1) Existing law appropriated \$500,000 from the General Fund to the Superintendent of Public Instruction for allocation to the Los Angeles Unified School District in the 1997-98 fiscal year to enhance education programs at the California Museum of Latino History, Art, and Culture related to exhibits on Latino history and culture.

This bill would reappropriate the unencumbered balance of these funds to the Superintendent of Public Instruction for allocation to the Montebello Unified School District for the same purpose, thereby making an appropriation.

(2) Existing law appropriated \$1,646,000 from the General Fund to the Superintendent of Public Instruction for allocation in the 1997-98 fiscal year to the San Joaquin County Office of Education for educational and operational costs for the Professional Development Center, technology training

for teachers, pupils, and support staff, and reading and mathematics projects.

This bill would provide that the funds are also allocated for capital outlay and startup, thereby making an appropriation.

(3) To the extent that the funds appropriated by this bill are allocated to a school district or a community college district, those funds would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(4) The bill would declare that it is to take effect immediately as an urgency statute.

~~Under the existing California Fair Employment and Housing Act, it is unlawful to engage in various specified discriminatory practices. This act, requires the Fair Employment and Housing Commission, if it finds that a respondent has engaged in unlawful practice, to state its findings of fact and determination, and issue and cause to be served cease and desist orders requiring a respondent to take specified actions to remedy the unlawful practice, and to take specified actions, including the award of actual damages, which, in combination with the amounts of any administrative fines imposed on the respondent pursuant to a specified provision, do not exceed \$50,000 per aggrieved person per respondent, as provided. This act also authorizes a person claiming to be aggrieved under the act to bring a civil action in the superior court under specified circumstances and authorizes the court to award any relief that in the court's judgment will effectuate the purpose of the act, including attorney's fees and costs.~~

~~This bill would eliminate the \$50,000 combined limit on actual damages and administrative fines that may be awarded by the Fair Employment and Housing Commission against, or imposed upon, a respondent pursuant to these provisions. The bill also would authorize a superior court to award expert witness fees, in addition to attorney's fees and costs in specified civil actions brought under the act.~~

Vote: ~~majority~~ <sup>2/3</sup>. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 12965 of the Government Code~~

*SECTION 1. The unencumbered balance of the funds appropriated in subdivision (aa) of Section 41 of Chapter 299 of the Statutes of 1997 is hereby reappropriated to the Superintendent of Public Instruction for allocation to the Montebello Unified School District for the same purposes as set forth in subdivision (aa) of Section 41 of Chapter 299 of the Statutes of 1997.*

*SEC. 2. The funds allocated by paragraph (1) of subdivision (j) of Section 1 of Chapter 889 of the Statutes of 1997, in addition to the purposes set forth in that paragraph, are also allocated for capital outlay and startup.*

*SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:*

*In order to implement the Budget Act of 1997 with respect to public schools and community colleges, and to effectively utilize the appropriation made in subdivision (aa) of Section 41 of Chapter 299 of the Statutes of 1997 during the 1997–98 fiscal year, it is necessary that this act take effect immediately.*

~~is amended to read:~~

~~12965. (a) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation or persuasion, or in advance thereof if circumstances warrant, the director in his or her discretion may cause to be issued in the name of the department a written accusation. The accusation shall contain the name of the person, employer, labor organization or employment agency accused, which shall be known as the respondent, shall set forth the nature of the charges, shall be served upon the respondent together with a copy of the verified complaint, as amended, and shall require the respondent to answer the charges at a hearing.~~

1 For any complaint treated by the director as a group or  
2 class complaint for purposes of investigation, conciliation,  
3 and accusation pursuant to Section 12961, an accusation  
4 shall be issued, if at all, within two years after the filing of  
5 the complaint. For all other complaints, an accusation  
6 shall be issued, if at all, within one year after the filing of  
7 a complaint. If the director determines, pursuant to  
8 Section 12961, that a complaint investigated as a group or  
9 class complaint under Section 12961 is to be treated as a  
10 group or class complaint for purposes of conciliation and  
11 accusation as well, such determination shall be made and  
12 shall be communicated in writing within one year after  
13 the filing of the complaint to each person, employer, labor  
14 organization, employment agency, or public entity  
15 alleged in the complaint to have committed an unlawful  
16 practice.

17 (b) If an accusation is not issued within 150 days after  
18 the filing of a complaint, or if the department earlier  
19 determines that no accusation will issue, the department  
20 shall promptly notify, in writing, the person claiming to  
21 be aggrieved that the department shall issue, on his or her  
22 request, the right-to-sue notice. This notice shall indicate  
23 that the person claiming to be aggrieved may bring a civil  
24 action under this part against the person, employer, labor  
25 organization or employment agency named in the  
26 verified complaint within one year from the date of that  
27 notice. If the person claiming to be aggrieved does not  
28 request a right-to-sue notice, the department shall issue  
29 the notice upon completion of its investigation, and not  
30 later than one year after the filing of the complaint. A city,  
31 county, or district attorney in a location having an  
32 enforcement unit established on or before March 1, 1991,  
33 pursuant to a local ordinance enacted for the purpose of  
34 prosecuting AIDS/HIV discrimination claims, acting on  
35 behalf of any person claiming to be aggrieved due to  
36 HIV/AIDS discrimination, may also bring a civil action  
37 under this part against the person, employer, labor  
38 organization, or employment agency named in the  
39 notice. The superior, municipal, and justice courts of the  
40 State of California shall have jurisdiction of those actions;

1 and the aggrieved person may file in any of these courts.  
2 Such an action may be brought in any county in the state  
3 in which the unlawful practice is alleged to have been  
4 committed, in the county in which the records relevant  
5 to the practice are maintained and administered, or in the  
6 county in which the aggrieved person would have  
7 worked or would have had access to the public  
8 accommodation but for the alleged unlawful practice, but  
9 if the defendant is not found within any of these counties  
10 an action may be brought within the county of  
11 defendant's residence or principal office. A copy of any  
12 complaint filed pursuant to this part shall be served on the  
13 principal offices of the department and of the  
14 commission. The remedy for failure to send a copy of a  
15 complaint is an order to do so. Those actions may not be  
16 filed as class actions or may not be maintained as class  
17 actions by the person or persons claiming to be aggrieved  
18 where those persons have filed a civil class action in the  
19 federal courts alleging a comparable claim of  
20 employment discrimination against the same defendant  
21 or defendants. In actions brought under this section, the  
22 court, in its discretion may award to the prevailing party  
23 reasonable attorney fees, including expert witness fees,  
24 and costs except where such action is filed by a public  
25 agency or a public official, acting in an official capacity.

26 (e) (1) If an accusation or amended accusation  
27 includes a prayer either for damages for emotional  
28 injuries as a component of actual damages, or for  
29 administrative fines, or for both, the respondent may  
30 within 30 days after service of the accusation or amended  
31 accusation, elect to transfer the proceedings to a court in  
32 lieu of a hearing pursuant to subdivision (a) by serving a  
33 written notice to that effect on the department, the  
34 commission, and the person claiming to be aggrieved.  
35 The commission shall prescribe the form and manner of  
36 giving written notice.

37 (2) No later than 30 days after the completion of  
38 service of the notice of election pursuant to paragraph  
39 (1), the department shall dismiss the accusation and shall,  
40 either itself or, at its election, through the Attorney

1 ~~General, file in the appropriate court an action in its own~~  
2 ~~name on behalf of the person claiming to be aggrieved as~~  
3 ~~the real party in interest. In this action, the person~~  
4 ~~claiming to be aggrieved shall be the real party in interest~~  
5 ~~and shall have the right to participate as a party and be~~  
6 ~~represented by his or her own counsel. Complaints filed~~  
7 ~~pursuant to this section shall be filed in the appropriate~~  
8 ~~superior, municipal, or justice court in any county in~~  
9 ~~which unlawful practices are alleged to have been~~  
10 ~~committed, in the county in which records relevant to the~~  
11 ~~alleged unlawful practices are maintained and~~  
12 ~~administered, or in the county in which the person~~  
13 ~~claiming to be aggrieved would have worked or would~~  
14 ~~have had access to public accommodation, but for the~~  
15 ~~alleged unlawful practices. If the defendant is not found~~  
16 ~~in any of these counties, the action may be brought within~~  
17 ~~the county of the defendant's residence or principal~~  
18 ~~office. Those actions shall be assigned to the court's delay~~  
19 ~~reduction program, or otherwise given priority for~~  
20 ~~disposition by the court in which the action is filed.~~

21 ~~(3) A court may grant as relief in any action filed~~  
22 ~~pursuant to this subdivision any relief a court is~~  
23 ~~empowered to grant in a civil action brought pursuant to~~  
24 ~~subdivision (b), in addition to any other relief that, in the~~  
25 ~~judgment of the court, will effectuate the purpose of this~~  
26 ~~part.~~

27 ~~(4) The department may amend an accusation to pray~~  
28 ~~for either damages for emotional injury or for~~  
29 ~~administrative fines, or both, provided that the~~  
30 ~~amendment is made within 30 days of the issuance of the~~  
31 ~~original accusation.~~

32 ~~SEC. 2. Section 12970 of the Government Code is~~  
33 ~~amended to read:~~

34 ~~12970. (a) If the commission finds that a respondent~~  
35 ~~has engaged in any unlawful practice under this part, it~~  
36 ~~shall state its findings of fact and determination and shall~~  
37 ~~issue and cause to be served on the parties an order~~  
38 ~~requiring the respondent to cease and desist from the~~  
39 ~~unlawful practice and to take action, including, but not~~  
40 ~~limited to, any of the following:~~

1 ~~(1) The hiring, reinstatement or upgrading of~~  
2 ~~employees, with or without backpay.~~

3 ~~(2) The admission or restoration to membership in any~~  
4 ~~respondent labor organization.~~

5 ~~(3) The payment of actual damages as may be~~  
6 ~~available in civil actions under this part, except as~~  
7 ~~otherwise provided in this section. Actual damages~~  
8 ~~include, but are not limited to, damages for emotional~~  
9 ~~injuries if the accusation or amended accusation prays for~~  
10 ~~those damages.~~

11 ~~(4) Notwithstanding paragraph (3), the payment of~~  
12 ~~actual damages up to one hundred fifty thousand dollars~~  
13 ~~(\$150,000) assessed against a respondent for a violation of~~  
14 ~~Section 51.7 of the Civil Code, as an unlawful practice~~  
15 ~~under this part.~~

16 ~~(5) Affirmative or prospective relief to prevent the~~  
17 ~~recurrence of the unlawful practice.~~

18 ~~(6) A report to the commission as to the manner of~~  
19 ~~compliance with the commission's order.~~

20 ~~(b) An unlawful practice under this part alone is not~~  
21 ~~sufficient to sustain an award of actual damages pursuant~~  
22 ~~to this section. The department is required to prove, by~~  
23 ~~a preponderance of the evidence, that an aggrieved~~  
24 ~~person has sustained actual injury. In determining~~  
25 ~~whether to award damages for emotional injuries, and the~~  
26 ~~amount of any award for these damages, the commission~~  
27 ~~shall consider relevant evidence of the effects of~~  
28 ~~discrimination on the aggrieved person with respect to~~  
29 ~~any or all of the following:~~

30 ~~(1) Physical and mental well-being.~~

31 ~~(2) Personal integrity, dignity, and privacy.~~

32 ~~(3) Ability to work, earn a living, and advance in his or~~  
33 ~~her career.~~

34 ~~(4) Personal and professional reputation.~~

35 ~~(5) Family relationships.~~

36 ~~(6) Access to the job and ability to associate with peers~~  
37 ~~and coworkers.~~

38 ~~The commission shall also consider the duration of the~~  
39 ~~emotional injury, and whether that injury was caused or~~  
40 ~~exacerbated by an aggrieved person's knowledge of a~~

1 respondent's failure to respond adequately to, or to  
2 correct, the discriminatory practice or by the  
3 egregiousness of the discriminatory practice.

4 (e) In addition to the foregoing, in order to vindicate  
5 the purposes and policies of this part, the commission may  
6 assess against the respondent, if the accusation or  
7 amended accusation so prays, an administrative fine per  
8 aggrieved person per respondent, the amount of which  
9 shall be determined in accordance with the combined  
10 amount limitation of paragraph (3) of subdivision (a).

11 (d) In determining whether to assess an  
12 administrative fine pursuant to this section, the  
13 commission shall find that the respondent has been guilty  
14 of oppression, fraud, or malice, expressed or implied, as  
15 required by Section 3294 of the Civil Code. In  
16 determining the amount of fines, the commission shall  
17 consider relevant evidence of, including, but not limited  
18 to, the following:

19 (1) Willful, intentional, or purposeful conduct.

20 (2) Refusal to prevent or eliminate discrimination.

21 (3) Conscious disregard for the rights of employees.

22 (4) Commission of unlawful conduct.

23 (5) Intimidation or harassment.

24 (6) Conduct without just cause or excuse.

25 (7) Multiple violations of the Fair Employment and  
26 Housing Act.

27 The moneys derived from an administrative fine  
28 assessed pursuant to this subdivision shall be deposited in  
29 the General Fund. No administrative fine shall be  
30 assessed against a public entity. The commission shall  
31 have no authority to award punitive damages as a remedy  
32 for a finding of employment discrimination.

33 (e) In addition to the foregoing, in order to vindicate  
34 the purposes and policies of this part, the commission may  
35 assess against the respondent if the accusation or  
36 amended accusation so prays, a civil penalty of up to  
37 twenty-five thousand dollars (\$25,000) to be awarded to  
38 a person denied any right provided for by Section 51.7 of  
39 the Civil Code, as an unlawful practice prohibited under  
40 this part.



1 ~~(f) If the commission finds the respondent has~~  
2 ~~engaged in an unlawful practice under this part, and the~~  
3 ~~respondent is licensed or granted a privilege by an agency~~  
4 ~~of the state to do business, provide a service, or conduct~~  
5 ~~activities, and the unlawful practice is determined to~~  
6 ~~have occurred in connection with the exercise of that~~  
7 ~~license or privilege, the commission shall provide the~~  
8 ~~licensing or privilege granting agency with a copy of its~~  
9 ~~decision or order.~~

10 ~~(g) If the commission finds that a respondent has not~~  
11 ~~engaged in an unlawful practice under this part, the~~  
12 ~~commission shall state its findings of fact and~~  
13 ~~determination and issue and cause to be served on the~~  
14 ~~parties an order dismissing the accusation as to that~~  
15 ~~respondent.~~

16 ~~(h) Any findings and determination made or any~~  
17 ~~order issued pursuant to this section shall be written and~~  
18 ~~shall indicate the identity of the members of the~~  
19 ~~commission who participated herein.~~

20 ~~(i) Any order issued by the commission shall have~~  
21 ~~printed on its face references to the rights of appeal of any~~  
22 ~~party to the proceeding to whose position the order is~~  
23 ~~adverse.~~

24 ~~(j) If the commission finds that a respondent has~~  
25 ~~engaged in an unlawful practice under this part, and it~~  
26 ~~appears that this practice consisted of acts described in~~  
27 ~~Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal~~  
28 ~~Code, the commission, with the consent of the~~  
29 ~~complainant, shall provide the local district attorney's~~  
30 ~~office with a copy of its decision and order.~~

31 ~~(k) Notwithstanding Section 12960, if the commission~~  
32 ~~finds that a respondent has engaged in unlawful~~  
33 ~~discrimination in housing under Section 12948, the~~  
34 ~~remedies afforded in Section 12987 or any other provision~~  
35 ~~in this part pertaining to housing discrimination, shall~~  
36 ~~apply.~~

37 ~~SEC. 3. Section 12989.2 of the Government Code is~~  
38 ~~amended to read:~~

39 ~~12989.2. In a civil action brought under Section 12989~~  
40 ~~or 12989.1, if the court finds that a discriminatory housing~~

1 ~~practice has occurred or is about to occur, the court may~~  
2 ~~award the plaintiff or complainant actual and punitive~~  
3 ~~damages and may grant other relief, including the~~  
4 ~~issuance of a temporary or permanent injunction, or~~  
5 ~~temporary restraining order, or other order, as it deems~~  
6 ~~appropriate to prevent any defendant from engaging in~~  
7 ~~or continuing to engage in an unlawful practice. The~~  
8 ~~court may, at its discretion, award the prevailing party,~~  
9 ~~other than the state, reasonable attorney's fees, including~~  
10 ~~expert witness fees, and costs.~~

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